

STATUTORY IMPASSE PROCEDURE
IOWA PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION OPINIONS & AWARDS

IMPASSE BETWEEN

IOWA CITY COMMUNITY
SCHOOL DISTRICT

-and-

IOWA CITY EDUCATION
ASSOCIATION, ISEA-NEA
UniServ

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PERB Case No CEO 334/Sector 3
Decision Issued: March 24, 2004

Jonathan Dworkin, Arbitrator

Representing the School District

Tom Folley

Board Attorney

Representing the Association

David Ulrick

UniServ Director

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BACKGROUND AND IMPASSE SUMMARY

I have visited Iowa City several times for factfindings, rights and interest arbitrations, and find it to be a truly a remarkable community. Its high employment and superb educational standards have as their underpinning the University of Iowa, which in my judgement is one of the outstanding Big Ten establishments

of higher learning.¹ Elementary and secondary education in Iowa City reflect the community's strong objectives. District enrollment, kindergarten through twelfth grade, is approximately 10,900. Although Iowa City is sixth largest in the state, its School District is fifth largest. The teaching staff of 812 individuals occupy 774.28 FTE's (full-time equivalencies). Of these, 395 have Bachelors Degrees, 394 have Masters Degrees, and 23 have Masters of Fine Arts, DEd, or PhD Degrees. It is hard to ascertain whether higher degrees make one a better teacher, but 100% of Iowa City Teachers meet the federal definition of "highly qualified." And each year since 2000-2001, students of this District have consistently exceeded U.S. and Iowa State scores in reading and math proficiency.

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The Iowa City Education Association (ICEA) is the recognized Bargaining Agent for Teachers employed by the District. Each year, the Board of Education and ICEA meet to modify, add, or get rid of terms and conditions in their Collective Bargaining Agreement. As often as not, the negotiating teams agree on most issues, but, after mediation, continue to be deadlocked on two or three. At that point (usually in April or May) the Iowa Public Employment Relations Board ("PERB") directs the parties to present their impasse to binding arbitration. Iowa

¹ As a lifelong Ohio resident, it always makes me feel disloyal to make this admission.

law is precise and restrictive both as to procedure and guidelines governing arbitral authority. In other public employment negotiations, post-mediation stalemates go through a two-step process. First is factfinding (advisory arbitration). Hopefully, negotiators will either accept factfinding recommendations or use them as guides for making their own settlements. But if they remain at odds, they move on to binding arbitration. In those cases, arbitrators must make issue-by-issue decisions by selecting one of three alternatives – the employer's best offer, the employee representative's best offer, or the factfinder's recommendation. However, the state legislature eliminated factfinding for Teachers. Their impasses proceed directly to arbitration. Section 7.5(1) of the Iowa Administrative Code provides in part:

In disputes unresolved after mediation where all or a portion of the public employees in the bargaining unit are teachers licensed under Iowa Code chapter 260 and the public employer is a school district, community college, or area education association, such request [for arbitration] may be made not less than ten days after the effective date of the appointment of the mediator but must be made not later than April 16 of the year when the resulting collective bargaining agreement is to become effective.

The Code sets forth strict time limits for decisions that arbitrators cannot legally violate; only the parties themselves can extend them.² In making awards, arbitra-

² Here, the arbitration convened early and, for reasons that need not be fully disclosed, the Representatives of the Board and ICEA granted me a brief extension. Even so, the decision was issued well before the statutory deadline for all Teacher interest arbitration awards.

tors are limited to selecting, issue-by-issue, either the employer's or bargaining unit's final offer. They cannot choose middle ground, improve either offer, or even correct substantive errors. Statutory guidelines for decision making are established by Section 20.22, Subsection 9 of the Public Employment Relations Act.

They are:

9. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other employees doing comparable work, giving consideration to factors peculiar to the area and the classification involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

These are common-sense regulations. Reduced to their essence, they say that one who is called upon to settle a negotiations impasse should be mindful of the legitimate concerns of both the employer and employees.

* * *

There are two issues to be decided. The first is what amount will be added to the current base salary of \$26,453 *including Phase II Money*³ for 2004-2005. The base is what is paid first-year Teachers holding Bachelors Degrees. The actual salaries increase on an index that gives credit for years of service and advanced educational achievements. They rise 4½% for each year up to fourteen steps, and also go up laterally for those whose educational levels reach Bachelors + 20 hours, Masters (or Bachelors + 45 hours), and Masters + 30 hours.⁴

The ICEA's final wage demand is \$812 on the base. The Board's final offer is \$707. Both parties historically have calculated all the costs of salary raises to express percentage increases including in addition to the money paid Teachers extended contracts, career longevity, health, dental, and life insurances, and FICA/PERS contributions. Using those figures, the Association's demand is for a 4.68% increase; the District's offer is 4.08%. The difference is minuscule – just over ½%. The actual money on the base is even less – a 3% demand against a 2.7% offer. In terms of dollars over the year, the Employer's offer will add \$58.02

³ Phase II is extra state funding for excellence in education. It is added to Teachers' salaries according to a formula in Article XVI, III-C of the Agreement. The current base wage without this state contribution is \$25,853. Since the amount of Phase II funding coming to the District for the next school year is known, I will refer to the total salary amounts instead of separating direct District obligations from state additions.

⁴ A footnote to Appendix C of the Agreement provides added stipends for Teachers earning Masters of Fine Arts, Educational Specialist, and Doctorate Degrees, and for those who are above the fourteenth annual step.

per month to the base while the ICEA's offer will add \$67.67. After taxes, neither proposal would dramatically enrich the Bargaining Unit. Moreover, it is clear from the evidence and the District's admissions that there is no question of ability to pay. It has a substantial carryover of unused spending authority from the current year and can well afford to grant the ICEA proposal. Similarly, the Association would lose little by accepting the Board's proposal. In other words, the decision on this offer is a toss-up; as much a flip of a coin as an examination of comparables, fairness, and the guidelines in Section 20.22, Subsection 9 of the Iowa Act.

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It is patently obvious that if wages were the only issue, the parties would have reached settlement long ago without the necessity of arbitral intrusion. It is the second issue, *Health Insurance*, that really generated the impasse.

Under Article XV of the Agreement, the District pays the cost of individual insurances for full-time employees and smaller designated amounts for those who work less than .75 FTE. Those who wish to obtain family coverage can purchase it by payroll deduction. A clause in the Agreement, which has been carried forward through several contractual periods, allows employees who have coverage through their spouses or domestic partners the right to opt out (also known as "adverse selection") from Board insurance. They receive, in addition to their

salaries, the cost of individual premiums, which they may use either to purchase annuities or pay for other insurance. Article XI, §IX provides in part:

The District will pay each employee with a contract of .75 – 1.00 FTE, \$452.00 or the cost of an individual insurance policy, whichever one is higher, per month to purchase a health insurance policy and/or annuity. Each employee with a contract of .50 – .74 FTE, will be paid \$255.00 per month to purchase a health insurance policy and/or annuity. Each employee with a contract of .10 – .49 FTE, will receive from the district \$25 per month to purchase an annuity.

Each side submitted a final offer to change the adverse-selection language. The Board's proposed modification is the most dramatic. It would freeze the opt-out payments at the existing \$452 – although insurance premiums will rise about \$58 per month next year – and grant the payments only to current employees. Their rights would be red-circled or "grand fathered". All new hires would be deprived of the same advantage. Whether or not they had spousal coverage, premiums for them would be contributed to the District's self-insured program. The Board insists that it needs this change desperately because younger Teachers with fewer claims have tended to opt-out. This has caused the fund to progressively decrease to the point of bankruptcy.

The ICEA counters that the change that the Board requests would not improve the financial stability of the fund. All it would do would be to diminish Teachers' income and create a two-tier salary system. Its proposal is to continue

current practice, but instead of paying the money directly to Teachers, it would require the Board to contribute it for them into tax-sheltered annuities ("TSA's").

ADDITIONAL FACTS AND ARGUMENTS ARBITRAL FINDINGS AND OPINIONS

Insurance and wages were the impasse issues that went to arbitration last year before Richard Pegnetter. In that dispute, the District sought to freeze its individual payments for both insurance premiums and adverse selections at \$375. This would have required employees using the coverage to pay an additional \$67 per month for the benefit. In that proposal, there was no suggestion of excluding new employees from opt-out privileges. Also, the Board's wage offer was \$100 on the base. It was countered by the ICEA demand for \$350. Arbitrator Pegnetter summarized the Board's insurance proposal at page four of his decision:

The current contract contains a health insurance clause that provides District payment of \$336 per month or the cost of an individual health insurance policy, whichever is higher, for each employee. This minimum dollar amount has usually provided enough support for full individual coverage and a portion of family health insurance cost. The clause also provides that employees can use the above amount to purchase an annuity in lieu of health insurance. About a third of the bargaining unit members use the tax sheltered annuity option. The District proposes new language, which provides single medical insurance for each employee, but places a limit of \$375 on money directed to purchase an annuity for full-time employees choosing not to take the health insurance coverage. The Association seeks to retain the existing language, with a modification of the \$336 minimum to a new \$452 amount.

As the parties probably anticipated, Arbitrator Pegnetter issued a split decision, carrying the health-insurance forward but limiting the wage increment to only \$100 on the base.⁵ Although he did not specifically say so in his decision, he plainly implied his belief that the low salary increase would add sufficient support for the medical-insurance fund, which was then also bleeding profusely:

In summary, a new, 2003-04 contract which provides for a \$100 increase in base salary, while preserving the format of the existing health insurance in the face of rapidly increasing insurance costs, will keep wages and fringe benefits competitive for Iowa City teachers. Combined, these two changes from the 2002-03 agreement will represent an increase of about 4.36% in costs for the District. Given enrollment growth and the strong financial health of the District's budget, this increase should work no hardship or undue pressure on the District and its supporting taxpayers.⁶

The record here contains clear, indisputable proof that the Pegnetter Award, though well intentioned, did not achieve its hoped-for objective. As the Board's Advocate strenuously argued, actuarial data from the Fund Administrator established that the money to pay health claims has eroded "horribly." Beginning with a general-fund transfer of \$939 in 1993, it ended the year with a balance \$853,295. It rose in each subsequent year to a high in 1998 of \$3,389,130. Then the downward slope began and continued without remission. It went to

⁵ The amount turned out to be approximately \$50 more than the award because of an unexpected premium reduction.

⁶ Pegnetter Award (unnumbered) 8.(issued June 4, 2003).

\$3,189,589 in 1999; \$2,495,855 in 2000; \$1,532,636 in 2001; \$245,221 in 2002. And after the Pegnetter award, it fell to a deficit of \$251 in 2003. In other words, the premiums will not support the insurance and without continual transfers from the general fund it will be unable to pay medical claims.

Will the Board's proposal cure the problem? Frankly, I doubt that it will – at least not immediately. ICEA witnesses testified that they learned in meetings with insurance experts that freezing adverse selection payments and excluding new employees from them will make no perceptible difference whatsoever. Though their testimony was hearsay, it was admissible and credible. However direct expert testimony from the Fund Administrator established that the Board proposal, if awarded, would gradually move the fund toward solvency.

I am surprised that the joint insurance committee has not devised something better. The ICEA must know that it cannot forever avoid either losing benefits or assuming a greater share of the costs. Employees are being forced to do this everywhere in both the private and public sectors. I will grant the Employer's health-care proposal, but with profound personal reservations. First, I see it as an experiment that is unlikely to prove itself over the long haul. Second, I have personal reservations about red-circling 84 percent of the workforce and reducing a benefit for the approximately 16 percent who will be new hires in the next school year. It is likely to create dissension in the ranks and, as the number of excluded Teachers rise in future years, the good relationship between the Board and the

ICEA predicably could deteriorate. But I recognize that these are my own ideas of fairness and justice. I also am compelled to observe that the U.S. Supreme Court has repeatedly cautioned arbitrators that they cannot use their personal attitudes as foundations for awards. Although the Court's mandate applies to rights (grievance) arbitrations, I find that it is also an appropriate restriction for interest disputes.

My hope is that this award will send a message to both the District and the ICEA to make more profoundly assertive efforts to stabilize their health insurance and find a way in future negotiations to abolish the two tiers, equalizing employee rights.

* * *

In his closing statement, the Board Advocate expressed his and the District's acknowledgment that Iowa City Teachers should be paid more. He affirmed that the salary offer from his side of the table would have been larger – perhaps even greater than the ICEA demand – if he could have received some insurance relief at the bargaining table. From my point of view, the difference of six-tenths of a percent between the two final offers is a pittance, which the general fund can easily afford to pay. Also, awarding the ICEA position will help ameliorate the loss experienced by about one-third of the Bargaining Unit whose adverse-selection payments will be frozen. And, it will spread the additional salary adjustments to

all the other Unit members as well. Although I do not routinely split awards, I find that doing so here is more than warranted. Therefore, I will award the Union's position on wages.

AWARDS

WAGES [Article XVI & Appendix C]

The ICEA final is awarded. For school-year 2004-2005, the base wage on the salary index shall be increased \$812 to \$26,665 (\$27,258 with Phase II Monies).

INSURANCE [Article XV & §IX]

For the compelling reasons, as set forth in the arbitral opinion, the final offer of the Iowa City Community School District is awarded. Article XV §IX⁷ shall be amended to provide:

For an employee who begins service prior to July 1, 2004 with a contract of .75 – 1.00 FTE, the District will provide the District's single health insurance policy or a \$452 annuity. The District will pay 60% of the cost of an individual health insurance policy for each employee with a contract of .50 – .74 FTE, or a \$255 annuity. Each employee with a contract of .10 – .49 FTE, will receive from the District \$25 per month to purchase an

⁷ The Board's proposal designates this provision as "Article XV, §X." However, it is §IX in this year's Agreement. I do not know if the proposal contains an immaterial clerical error or the number of the Section is to be changed in the new Contract. In either event, my meaning should be clear.

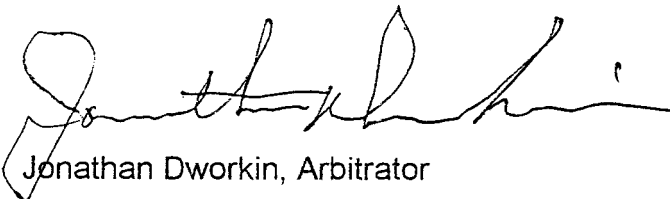
annuity. Full-time employees that elect to take the District's family insurance would pay the difference between the cost of the District's family premium and the cost of the District's single premium. Part-time employees that elect to take the District's family insurance will pay the difference of the cost of the District's family insurance premium and the cost of the District's contribution allotted to part-time employees. In either case no annuity would be given.

For any employee who begins service after June 30, 2004, with a contract of .75 – 1.00 FTE, the District will provide the District's single health insurance policy. The District will pay 60% of the cost of an individual health insurance policy for employee with a contract of .50 – .74 FTE. Full-time employees that elect to take the District's family insurance, would pay the difference between the cost of the District's family premium and the cost of the District's single premium. Part-time employees that elect to take the District's family insurance will pay the difference of the cost of the District's family insurance premium and the cost of the District's contribution allotted to part time employees.

Any remainder of premium for medical insurance in excess of the cost of the District's single premium amount shall be paid by the employee through a payroll deduction.

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I certify that this Decision was issued at Lorain County Ohio May 24, 2004, within a brief extension of negotiation time limits mutually granted by the parties.



Jonathan Dworkin, Arbitrator

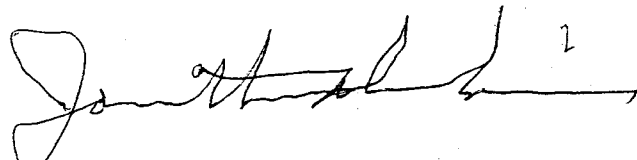
CERTIFICATES OF SERVICE

I certify that on the 24th day of May, 2004, I served true copies of the foregoing awards with my statement for services and expenses on the Iowa City Education Association and the Iowa City Community School District by Express Mail to their respective Representatives:

David Ulrick, UniServe Director
Representing the Iowa City Education Association
240 Classic Car Street SW, Suite B
Cedar Rapids, Iowa 52404

Tom Folley, Attorney
Representing the Iowa City Community School District
700 Walnut Street, Suite 1600
Des Moines, Iowa 50309

I further certify that on May 25, 2004, I will submit these Awards for filing together with copies of my statement for services and expenses, the complete hearing record (excluding personal notes) and tape recordings of the hearing to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, IA 50309.



Jonathan Dworkin, Arbitrator